IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.898 OF 2003
IN
SUMMARY SUIT NO.2519 OF 2003

Savita Chemicals Limited Plaintiffs

verss

Archana Industries Transformers
Pvt. Ltd. Defendant

J.K.Hegde for plaintiffs.
R.V.Govilkar for defendant

CORAM : S.C.DHARMADHIKARI, J.
DATE : 20th June 2005
PC :

1. Heard Mr.Hegde for plaintiff and Mr.Govilkar for defendant. This summons for judgement is taken out in a summary suit claiming a decree/judgement in the sum of Rs.11,65,849/-.

2. The suit arises out of a written contract evidenced by purchase orders, bills, delivery challans under which the plaintiffs, who are manufacturers of petroleum speciality and allied products have supplied Transol Transformers Oil - bulk. The plaintiffs state that goods covered by the bills (Exhibits-A to A-1) have been duly received and appropriated by the defendants. They claim that interest is payable on the outstanding bills in accordance with the

stipulation in the invoices itself. The plaintiffs' case is that the defendants have failed to pay the plaintiffs amounts under each of these bills on their due dates. The principal amount is Rs.9,45,841/- and interest thereon @ 24% p.a.. which has been demanded by a demand notice dated 29th January 2003. The defendants, according to plaintiffs, have duly received even this demand notice but there is no compliance with the requisitions contained therein.

3. According to the plaintiffs they are carrying on business at Mumbai. The purchase orders were received and accepted at Mumbai. The amount due is payable at Mumbai. All disputes are subject to Mumbai Court jurisdiction only. According to the plaintiffs the material part of cause of action has thus arisen at Mumbai. However, defendants are carrying on business at Nagpur and the goods under the purchase orders/invoices were dispatched from the plaintiffs' factory at Silvasa and delivered to the defendants at Nagpur. This part of the cause of action has arisen out of the jurisdiction of this Court. Leave under clause XII of Letters Patent is granted to try and entertain present suit.

4. On a petition for grant of leave under Clause XII of the Letters Patent, a learned Single Judge was pleased to grant leave. On appearance being entered in the summary suit, the summons for judgement has been taken out and served on the defendants advocate.

5. An affidavit-in-reply has been filed by the defendants which has been affirmed as early as on 14th October 2003 and copy thereof has been forwarded to the defendants advocate.

6. At the hearing of this summons for judgement Mr.Hegde reiterated the aforesaid submissions and contended that once the summary procedure is rightly being invoked by the plaintiffs, they are entitled to a judgement in their favour. He invites my attention to the fact that all contentions raised in the affidavit in reply are frivolous and/or vexatious and leave alone raising substantial defence, the attempt is to delay the claim of the plaintiff some how or the other. He, therefore, prays for a decree in the sum as claimed.

7. Mr.Govilkar, learned advocate appearing for the defendants raises three contentions for my

consideration. He firstly contends that this Court has no jurisdiction to entertain and try the present suit. In the submission of Mr.Govilkar, even if the leave is granted under clause XII of Letters Patent and no steps have been taken to revoke the same, yet, the jurisdictional issue can still be raised. According to him, it is false to suggest that any part much less material part of the cause of action arose within the jurisdiction of this Court. On the other hand, he submits that the factory of the plaintiffs is at Silvasa, delivery was made from Silvasa, the representative of plaintiffs had collected the purchase order from the defendants at Nagpur. Thus, the order was placed at Nagpur. The supply was at Nagpur. Delivery was also taken at Nagpur. Cheques were payable at Nagpur. In the light of this, according to him, this Court has no jurisdiction to entertain and try the present suit and the plaint, therefore, be returned for presentation to the proper Court.

8. Without prejudice to the aforesaid, his second submission is that the defendants never placed any order for the goods "Transol Transfoemer Oil". On the other hand, they have

placed order for "New EHV Grade Transformer Oil as per ISS:355." Thus, the goods which were ordered were different than the goods which were allegedly sold. Consequently, there is no question of paying for the same. He states that each of these aspects have been brought to the notice of plaintiffs by the defendants. In fact, they were requested to take back the goods. However, the goods were not taken back and they are still lying stored in the barrels. Mr.Govilkar states that the goods were to be utilised by the defendants in their contract with the Maharashtra State Electricity Board (MSEB). Since the obligation towards MSEB could not be discharged, penalties were levied by the MSEB and therefore, losses have been suffered by the defendants on account of these actions of the plaintiffs. Consequently, they have a counter claim/set-off which is much more than the plaintiffs claim in the suit. The third submission is that there is no agreement to pay interest much less @ 24% p.a..

9. Mr.Hegde states that all these submissions are after thought and an attempt to avoid payment. He proceeds on the basis of denials.

10. As far as first contention is concerned, apart from the fact that no application is made to revoke the leave under clause XII of the Letters Patent, additionally I do not find any materials annexed to the affidavit or otherwise produced to support the submissions that no part of the cause of action has arisen within the jurisdiction of this Court. The proper course was to take out appropriate proceedings for revocation of the leave and consequently raise issue of jurisdiction so that appropriate orders could have been passed by this Court. The affidavit which is filed on 14th October 2003 in reply to the summons for judgement annexes no documents for me to revoke the leave already granted. However, in the light of the direction that I propose to give on the summons for judgement, if at further stage the defendant raises this issue, it can be raised provided it is permissible in law. Prima facie, once the leave is granted, then there is no scope for reopening the issue of jurisdiction at this stage.

11. Equally, the contention that the goods which were ordered for have not supplied and what is supplied is distinct from what is ordered is

concerned, once again, there is nothing to show that any protest was lodged either immediately after receipt of the first consignment or subsequently when the bills were due. From the copies of the invoices which are annexed to the plaint, it is crystal clear that the order number and date (revised) is mentioned. The date of the delivery challans and number is mentioned. The transporter's name and details are mentioned. The goods are described, quality is also mentioned along with rate. These are supplies made as early as in March 2002. The payment was due in June and July 2002. The defence as raised pertaining to the quality of the goods has not been raised immediately after the goods were received and/or utilised. The submission of Mr.Govilkar demonstrates that in fact the goods were received at site. If there was a dispute it would have been raised immediately. In any event, after receipt of letter dated Exhibit-B dated 29th January 2003 there could have been a protest. When the summary suit was filed on 10th July 2003 and an affidavit in reply is filed on 14th October 2003, between this period also there does not appear to be any correspondence on this issue. Save and except stating that MSEB has levied some penalty and there is some

correspondence with the MSEB would not carry the matter any further. Neither is there any reference to any correspondence nor is there anything produced on record to show about meeting of the plaintiffs representative. Therefore, without any materials on record, it will not be proper to hold that the defendants have not received what they have ordered.

12. The last contention is about the rate of interest. The invoices clearly mention the rate of interest @ 24% p.a.. The invoice’s copy has been duly received. The invoices apart from mentioning a fact that exclusive jurisdiction is conferred on the Mumbai Court, mentions under column "terms of payment" specifically rate of interest. This stipulation was clearly binding on the defendants.

13. In the light of the aforesaid conclusions, normally, a decree would follow. However, in the case of M/s.Mechalec Engineers and Manufacturers Vs. M/s.Basic Equipment Corporation reported in AIR-1977-SC-577 the Supreme Court has culled out principles on which an application for leave to defend is to be considered. One of the principle to be applied is that even if a defence raised on

affidavit is not found to be of substance but raises some plausible case, then appropriate directions showing mercy to the defendants, could be issued. In the present case, despite the aforesaid observations, I do not wish to take away the opportunity to the defendants to raise appropriate contentions not only on the issue of jurisdiction of this Court but also on their pleas with regard to the quality of goods and counter claim or set-off on account of alleged loss. However, such opportunity cannot be granted at the cost of plaintiffs claim. Hence conditional order granting leave to defend would serve the ends of justice.

14. Accordingly, on the defendants depositing in this Court a sum or Rs.5.50 lakh (Rs.Five lakh fifty thousand only) within a period of 12 weeks from today, the suit shall stand transferred to the list of commercial causes with usual directions to file written statement, discovery and inspection.

15. Needless to observe that if no such deposit is made further consequences in law would follow.

16. On the defendants making deposit it would be

open for the plaintiff to seek appropriate directions including withdrawal of the amount deposited. That application would be considered on its own merits. Reserving such opportunities to the plaintiff and keeping open defendants contentions in that behalf, this summons for judgement is disposed off.

(S.C.DHARMADHIKARI, J.)